

**7 Official Opinions of the Compliance Board 259 (2011)**

**Notice – Timing –**

**Generally – Best notice feasible required for meetings scheduled on short notice – Obscure location of notice on website not a violation when other methods used**

**Practices permitted – combination of notice by e-mail to interested citizens, press release, and website posting**

July 13, 2011

*Michele J. Fluss*  
*Complainant*

*Coastal and Watershed Resources*  
*Advisory Committee:*  
*Respondent*

We have considered the complaint of Michele J. Fluss (“Complainant”) that the Coastal and Watershed Resources Advisory Committee (“CWRAC”) violated the Open Meetings Act (“Act”) “by failing to give proper reasonable notice” of its April 22, 2011 meeting.

For the reasons stated below, we find that CWRAC did not violate the Act with respect to its efforts to provide public notice of the April 22, 2011 meeting.

**I**

**Facts and contentions**

Complainant alleges that CWRAC, an independent advisory committee located in the Maryland Department of Natural Resources (“DNR”), did not give adequate public notice of its April 22, 2011, meeting. Overall, she argues that CWRAC’s methods for giving notice of that meeting were insufficient. Specifically, she argues that CWRAC’s use of an e-mail distribution list was insufficient; that the meeting notice was too hard to find on the DNR website; that the method of posting notice on a website is unreliable and should be supplemented by press releases; that CWRAC deviated from its usual practice of giving notice in a DNR newsletter; and that CWRAC has not implemented the promises it made to us when it responded to the complaint she submitted in 2010.

With respect to CWRAC’s use of e-mail, Complainant states that CWRAC gave notice by e-mail to “a select group of persons ... included on a CWRAC meetings notification list” and that “the majority of individuals

named on the list are either a member of a local or state government group or a member of a special interest group.” She states, “Only a few are members of the general public.” CWRAC’s executive secretary, a DNR employee, issued the notice in a form of a brief letter. In it, he informed the recipients of the meeting, attached an agenda and directions to the meeting site, stated that he would send the minutes of the February 25, 2011 meeting shortly, and provided links to certain documents produced by a CWRAC project. Many addresses on the distribution list are either non-governmental or educational. Complainant is on the list and received notice of the meeting. According to Complainant, CWRAC also gave notice by e-mail to the subscribers to an electronic newsletter issued by the DNR’s Chesapeake and Coastal Program (“Coastal Program”), which is one of the entities advised by CWRAC.

With respect to website notice, CWRAC posted a notice of the meeting on DNR’s website. Complainant states that it was difficult to find the link on DNR’s website and that the calendar posted on the website is for 2010. The meeting notice could be located by entering “CWRAC” in the search box and reviewing the results, but it was not posted on CWRAC’s home page. Complainant further asserts that the provision of notice by a website is inherently unreliable and deficient and that CWRAC should issue press releases, as it undertook to do in connection with the complaint we addressed in 2010. *See 7 OMCB Opinions* 18 (2010). CWRAC responds that all of its 2011 meetings dates are now posted on a corrected calendar on the DNR website and that DNR did provide notice to the media. The calendar appears on the Coastal Program’s website, and CWRAC provided DNR’s list of the “press media” to which DNR emails its news briefs. CWRAC states that while DNR typically sends meeting notices of “calendared meetings” to the press two weeks in advance, the notice of this meeting was sent on April 20 because scheduling issues associated with Good Friday prevented CWRAC from providing notice sooner. April 22 fell on Good Friday, and the meeting was scheduled at a church.

With respect to notice by newsletter, Complainant states that CWRAC customarily gives notice of its meetings in DNR’s monthly electronic newsletter, but did not follow that practice for the April 22 meeting. The Coastal Program did not publish a newsletter in March and issued its April newsletter on April 26.

With respect to Complainant’s prior complaint against CWRAC, she alleged in early 2010 that CWRAC was not providing “reasonable advance public notice” of certain meetings. CWRAC responded that it would “provide notice of CWRAC meetings via news releases sent to representatives of news media throughout the State that regularly report on [DNR’s] activities and [that

it would] post notice of the meetings on the calendar on [DNR's] website.” We gave the following guidance:

Before a public body conducts a meeting that is subject to the Open Meetings Act, “reasonable advance notice” is required. §10-506(a). In terms of the method that notice might be given, the Act allows public bodies such as the CWRAC considerable discretion. As a State entity, notice could be given through the Maryland Register. Notice to representatives of the media who regularly report on activities of the public body or the activities of State government would have satisfied the Act. If the public is aware of the practice, posting notice on a website ordinarily used by the public body to communicate to the public or posting at a convenient public location either at or near the planned session would satisfy the Act. Finally, the Act recognizes that the notice requirement may be satisfied “by any other reasonable method.” §10-506(c). Apparently, any member of the public could have asked the Department of Natural Resources to be added to the list whereby he or she would have received automatic notice by e-mail in advance of CWRAC meetings. Had this practice been accompanied by any other method of giving notice under the Act, it would be a very effective mechanism of communicating with those persons known to have an interest in following CWRAC activities. The deficiency here, however, is that it apparently was the sole practice followed. Anyone who had not known to preregister, or who chose not to preregister, was effectively deprived of any notice in advance of the meetings, resulting in a violation of §10-506(a). As we have previously recognized, when a public body fails to give proper notice in advance of a meeting, the meeting is not in reality an open meeting. 6 *OMCB Opinions* 47, 49 (2008). We acknowledge the Department’s assurances that notice of meetings will be given by additional methods in order to ensure compliance with the Act in the future.

7 *OMCB Opinions, supra*, at 19-20.

## II

### Discussion

The facts we have recited show that CWRAC scheduled the April 22, 2011, meeting on short notice.<sup>1</sup> We have stated:

If a meeting is scheduled on short notice, as sometimes will be required by unexpected developments, the person responsible for the scheduling of the meeting must provide the best public notice feasible under the circumstances.

1 *OMCB Opinions* 38, 39 (1993). That requirement may be fulfilled by delivery of notice to the media which usually cover a public body's activities. 6 *OMCB Opinions* 32, 33 (2008).

Here, DNR, which apparently coordinates all of the DNR entities' communications to the press, gave the press notice of the meeting on April 20, 2011. Furthermore, CWRAC's executive secretary provided notice by e-mail to the people who had shown their interest in CWRAC's activities by signing up to receive notices and to people who had signed up to receive the Coastal Program newsletter. We find that CWRAC's use of this combination of methods was sufficient under the Act, comported with the statements CWRAC made when responding to Complainant's earlier complaint, and complied with the guidance we gave in that matter. Whether it would also have been feasible for CWRAC to modify its page on the DNR website during the week of April 18, 2011, in order to make the notice more prominent is a fact we do not know. We can state, however, that it was not feasible for CWRAC to give notice in the DNR Coastal Program newsletter; the March newsletter was issued before

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<sup>1</sup> That circumstance does not evidence a violation of the Act, which does not mandate a specific interval between the date of the notice and the date of the meeting. 5 *OMCB Opinions* 83, 84 (2006). "Absent evidence that a public body scheduled a meeting primarily to foil the public's right to attend and observe," we usually do not second-guess the public body's decisions on when to meet. 4 *OMCB Opinions* 51, 56 (2004). We see no such evidence here. First, the information provided to us shows that "[s]cheduling difficulties associated with the Good Friday holiday prevented DNR from posting CWRAC's April 22, 2011 meeting on the DNR calendar before April 18, 2011." Second, the executive secretary's routine provision in the public notices of an agenda and unusually-detailed information on how to get to the meeting place and where to park, together with earlier invitations to members of the public to apply to join the committee, do not suggest a resistance to public participation.

the meeting was scheduled, and the April newsletter was issued after the meeting itself.

It may be useful for us to give some direction on the use of websites to provide public notice. When a public body has a home page, even one maintained by another entity, the public can reasonably expect to find the public body's meeting notices there, or at least some direction on how to locate those notices. Even now, CWRAC's events appear on DNR's searchable events schedule and the calendar on the Chesapeake and Coastal Program webpage, but not on CWRAC's own website. We commend CWRAC for the thorough content of its notices and encourage it to make that content more accessible by adding instructions or links to the Coastal Program calendar and DNR events schedule.

### **III**

#### **Conclusion**

We find that while it was difficult to locate the April 22, 2011, meeting notice CWRAC posted on DNR's website, CWRAC gave the best notice feasible under the circumstances for that particular meeting. We encourage CWRAC to better apprise the public of the fact that it meets periodically by posting on its own home page either the dates of its meetings or links to the Coastal Program calendar and DNR schedule.

OPEN MEETINGS COMPLIANCE BOARD

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